

AMENDED IN SENATE AUGUST 23, 2004

AMENDED IN SENATE AUGUST 17, 2004

AMENDED IN SENATE JUNE 10, 2004

AMENDED IN ASSEMBLY MARCH 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 384**

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**Introduced by Assembly Member Leslie**  
**(Coauthors: Assembly Members Cogdill, Daucher, Koretz, Maze,**  
**and Plescia)**  
**(Coauthors: Senators Denham, Johnson, Oller, and Romero)**

February 14, 2003

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An act to amend Section 7596 of the Government Code, to amend Sections 308, 2762, 3326, and 5005 of, and to add Section ~~5030~~ *5030.1* to, the Penal Code, and to amend Section 1752.5 of, and to add Section 1712.5 to, the Welfare and Institutions Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 384, as amended, Leslie. Tobacco products: correctional facilities.

Existing law allows the Director of the Department of Corrections to prescribe and amend rules and regulations for the administration of state prisons. Existing law includes tobacco products among the products that may be authorized for sale to inmates at state prison facilities.

Existing law allows the Director of the Department of the Youth Authority to make and enforce all rules appropriate to the proper

accomplishment of the functions of the department, including the correction and rehabilitation of young persons who have committed public offenses. Existing law includes tobacco products among the products that may be authorized for sale to inmates at Youth Authority facilities.

This bill would prohibit the possession or use of tobacco products by inmates and wards under the jurisdiction of the Department of Corrections and the Department of the Youth Authority. It would require the directors of these departments to adopt regulations to implement this prohibition, and would require that these regulations include an exemption for departmentally approved religious ceremonies.

The bill would, in addition, prohibit the use of tobacco products by any person not included among those described above on the grounds of any institution or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority, with the exception of residential staff housing where inmates or wards are not present. It would eliminate tobacco products from the list of items that may be sold at those institutions and facilities.

The bill would provide that these provisions shall become operative on July 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 7596 of the Government Code is
- 2 amended to read:
- 3 7596. As used in this chapter:
- 4 (a) "Public building" means a building owned and occupied,
- 5 or leased and occupied, by the state, a county, a city, a city and
- 6 county, or a California Community College district.
- 7 (1) "Inside a public building" includes all indoor areas of the
- 8 building, except for covered parking lots and residential space.
- 9 "Inside a public building" also includes any indoor space leased
- 10 to the state, county, or city, except for covered parking lots and
- 11 residential space.
- 12 (2) "Residential space" means a private living area, but it does
- 13 not include common areas such as lobbies, lounges, waiting areas,



1 elevators, stairwells, and restrooms that are a structural part of a  
2 multicomplex building such as a dormitory.

3 (b) “State” or “state agency” means a state agency, as defined  
4 pursuant to Section 11000, the Legislature, the Supreme Court and  
5 the courts of appeal, and each campus of the California State  
6 University and the University of California.

7 (c) “Public employee” means an employee of a state agency or  
8 an employee of a county or city.

9 SEC. 2. Section 308 of the Penal Code is amended to read:

10 308. (a) Every person, firm, or corporation that knowingly or  
11 under circumstances in which it has knowledge, or should  
12 otherwise have grounds for knowledge, sells, gives, or in any way  
13 furnishes to another person who is under the age of 18 years any  
14 tobacco, cigarette, or cigarette papers, or any other preparation of  
15 tobacco, or any other instrument or paraphernalia that is designed  
16 for the smoking or ingestion of tobacco, products prepared from  
17 tobacco, or any controlled substance, is subject to either a criminal  
18 action for a misdemeanor or to a civil action brought by a city  
19 attorney, a county counsel, or a district attorney, punishable by a  
20 fine of two hundred dollars (\$200) for the first offense, five  
21 hundred dollars (\$500) for the second offense, and one thousand  
22 dollars (\$1,000) for the third offense.

23 Notwithstanding Section 1464 or any other provision of law, 25  
24 percent of each civil and criminal penalty collected pursuant to this  
25 subdivision shall be paid to the office of the city attorney, county  
26 counsel, or district attorney, whoever is responsible for bringing  
27 the successful action, and 25 percent of each civil and criminal  
28 penalty collected pursuant to this subdivision shall be paid to the  
29 city or county for the administration and cost of the community  
30 service work component provided in subdivision (b).

31 Proof that a defendant, or his or her employee or agent,  
32 demanded, was shown, and reasonably relied upon evidence of  
33 majority shall be defense to any action brought pursuant to this  
34 subdivision. Evidence of majority of a person is a facsimile of or  
35 a reasonable likeness of a document issued by a federal, state,  
36 county, or municipal government, or subdivision or agency  
37 thereof, including, but not limited to, a motor vehicle operator’s  
38 license, a registration certificate issued under the Federal Selective  
39 Service Act, or an identification card issued to a member of the  
40 armed forces.

1 For purposes of this section, the person liable for selling or  
2 furnishing tobacco products to minors by a tobacco vending  
3 machine shall be the person authorizing the installation or  
4 placement of the tobacco vending machine upon premises he or  
5 she manages or otherwise controls and under circumstances in  
6 which he or she has knowledge, or should otherwise have grounds  
7 for knowledge, that the tobacco vending machine will be utilized  
8 by minors.

9 (b) Every person under the age of 18 years who purchases,  
10 receives, or possesses any tobacco, cigarette, or cigarette papers,  
11 or any other preparation of tobacco, or any other instrument or  
12 paraphernalia that is designed for the smoking of tobacco,  
13 products prepared from tobacco, or any controlled substance shall,  
14 upon conviction, be punished by a fine of seventy-five dollars  
15 (\$75) or 30 hours of community service work.

16 (c) Every person, firm, or corporation which sells, or deals in  
17 tobacco or any preparation thereof, shall post conspicuously and  
18 keep so posted in his, her, or their place of business at each point  
19 of purchase the notice required pursuant to subdivision (b) of  
20 Section 22952 of the Business and Professions Code, and any  
21 person failing to do so shall upon conviction be punished by a fine  
22 of ten dollars (\$10) for the first offense and fifty dollars (\$50) for  
23 each succeeding violation of this provision, or by imprisonment  
24 for not more than 30 days.

25 (d) For purposes of determining the liability of persons, firms,  
26 or corporations controlling franchises or business operations in  
27 multiple locations for the second and subsequent violations of this  
28 section, each individual franchise or business location shall be  
29 deemed a separate entity.

30 (e) It is the Legislature's intent to regulate the subject matter of  
31 this section. As a result, no city, county, or city and county shall  
32 adopt any ordinance or regulation inconsistent with this section.

33 SEC. 3. Section 2762 of the Penal Code is amended to read:

34 2762. The Director of Corrections shall fix a daily rate to be  
35 expended for convict labor, and when so fixed, the Department of  
36 Transportation shall monthly set aside funds to the director to pay  
37 for this labor from funds appropriated in the Budget Act for this  
38 purpose, and where no funds are available to the Department of  
39 Transportation the director may set aside the department's own  
40 funds to pay for this labor from funds appropriated in the Budget

1 Act for this purpose. The Department of Corrections shall set up  
 2 an account for each convict which shall be credited monthly with  
 3 an amount computed by multiplying the daily rate by the number  
 4 of days such convict actually performed labor during the month.  
 5 Such account shall be debited monthly with the convict's  
 6 proportionate share of expenses of camp maintenance, including  
 7 the expenses for food, medicine, medical attendance, clerical and  
 8 accounting personnel, and the expenses necessary to maintain care  
 9 and welfare facilities such as camp hospital for first aid,  
 10 barbershop and cobbler shop, and the convict's personal expenses  
 11 covering his drawings from the commissary for clothing, toilet  
 12 articles, candy, and other personal items. The charge for camp  
 13 maintenance may be made at a standard rate determined by the  
 14 department maintaining the camps to be adequate to cover  
 15 expenses and shall be adjusted periodically at the discretion of the  
 16 department as needs of the camp require. No charge shall be made  
 17 against such account for the costs of transporting prisoners to and  
 18 from prison and camp or for the expense of guarding prisoners,  
 19 which items shall be paid by the Department of Corrections from  
 20 appropriations made for the support of the department. The  
 21 director, by regulation, may fix the maximum amount, over and  
 22 above all deductions, that a convict may receive. The Department  
 23 of Corrections, in computing the debits to be made to the convict's  
 24 accounts, may add not to exceed 10 percent on all items.

25 SEC. 4. Section 3326 of the Penal Code is amended to read:  
 26 3326. The department is authorized to provide the necessary  
 27 facilities, equipment, and personnel to operate a commissary at  
 28 any institution under its jurisdiction for the sale of toilet articles,  
 29 candy, gum, notions, and other sundries.

30 SEC. 5. Section 5005 of the Penal Code is amended to read:  
 31 5005. The department may maintain a canteen at any prison  
 32 or institution under its jurisdiction for the sale to persons confined  
 33 therein of toilet articles, candy, notions, and other sundries, and  
 34 may provide the necessary facilities, equipment, personnel, and  
 35 merchandise for the canteen. The director shall specify what  
 36 commodities shall be sold in the canteen. The sale prices of the  
 37 articles offered for sale shall be fixed by the director at the amounts  
 38 that will, as far as possible, render each canteen self-supporting.  
 39 The department may undertake to insure against damage or loss of  
 40 canteen and handicraft materials, supplies and equipment owned

1 by the Inmate Welfare Fund of the Department of Corrections as  
2 provided in Section 5006.

3 The canteen operations at any prison or institution referred to in  
4 this section shall be audited biennially by the Department of  
5 Finance, and at the end of each intervening fiscal year, each prison  
6 or institution shall prepare a statement of operations. At least one  
7 copy of any audit report or statement of operations shall be posted  
8 at the canteen and at least one copy shall be available to inmates  
9 at the library of each prison or institution.

10 SEC. 6. Section ~~5030~~ *5030.1* is added to the Penal Code, to  
11 read:

12 ~~5030.~~

13 *5030.1.* (a) The possession or use of tobacco products by  
14 inmates under the jurisdiction of the Department of Corrections is  
15 prohibited. The Director of Corrections shall adopt regulations to  
16 implement this prohibition, which shall include an exemption for  
17 departmentally approved religious ceremonies.

18 (b) The use of tobacco products by any person not included in  
19 subdivision (a) on the grounds of any institution or facility under  
20 the jurisdiction of the Department of Corrections is prohibited,  
21 with the exception of residential staff housing where inmates are  
22 not present.

23 SEC. 7. Section 1712.5 is added to the Welfare and  
24 Institutions Code, to read:

25 1712.5. (a) The possession or use of tobacco products by  
26 wards and inmates in all institutions and camps under the  
27 jurisdiction of the Department of the Youth Authority is  
28 prohibited. The Director of the Youth Authority shall adopt  
29 regulations to implement this prohibition, which shall include an  
30 exemption for departmentally approved religious ceremonies.

31 (b) The use of tobacco products by any person not included in  
32 subdivision (a) on the grounds of any institution or facility under  
33 the jurisdiction of the Department of the Youth Authority is  
34 prohibited, with the exception of residential staff housing where  
35 inmates or wards are not present.

36 SEC. 8. Section 1752.5 of the Welfare and Institutions Code  
37 is amended to read:

38 1752.5. The director may establish and maintain at any  
39 institution or camp under his jurisdiction a canteen for the sale to  
40 persons confined therein of candy, nutritional snacks, toilet

1 articles, sundries, and other articles. The canteen shall operate on  
2 a nonprofit basis. However, if sales should exceed costs, the  
3 surplus shall be deposited in a special fund, to be designated  
4 “Benefit Fund.” Any moneys contained in such fund shall be used  
5 for the benefit of the wards resident at the institution or camp.  
6 SEC. 9. This act shall become operative on July 1, 2005.

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